

## **REMARKS/ARGUMENTS**

Claims 1-3, 5 and 7-20 are pending in the instant application. Claim 1 has been amended. No new matter has been added.

### **I. Double Patenting Rejection**

Claims 1-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending application no. 10/813,980.

Applicants maintain that since the instant application and U.S. Patent Application Serial No. 10/813,980 is still pending, the rejection is "provisional." Applicants will address this rejection further after a notice concerning the allowable subject matter in the present application has been received.

### **II. Rejections under 35 USC §102**

Claims 1-3 and 7-20 stand rejected under §102(b) as being anticipated by Knowlton (6,350,276). In response to Applicant's previous argument that Knowlton I (276 patent) does not disclose a method using a combination of energy treatments delivered to different tissue depths, the Examiner asserts that "Applicant has overlooked the fact that the mechanical force applied to the tissue actually moves the tissue and a force applied over a distance no matter how minute is mechanical energy, thus mechanical energy is also delivered to tissue." (Page 7 of the instant Office Action).

Without acquiescing to the Examiner's arguments, and merely to expedite prosecution of the instant application, the Applicant has amended claim 1 to recite the limitation "using an electromagnetic energy delivery device to apply a combination of energy treatments delivered to different tissue depths." Applicants submit that the currently amended Claim 1 overcomes the Examiner's argument that the mechanical force disclosed in Knowlton I reads on the instantly claimed combination of energy treatments. Accordingly, based on the arguments above and those made previously in the Response filed February 13, 2008, Applicants submit that the instant claims are not

anticipated by Knowlton I, Applicant respectfully requests the withdrawal of the present rejection.

### **III. Rejections under 35 U.S.C. §103**

Claim 5 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Knowlton (USPN 6,350,276) (Knowlton I), as applied to claim 1, and further in view of Knowlton (USPN 6,377,854)(Knowlton II).

Applicants respectfully disagree and traverse the rejection.

As discussed above, and in the previously filed Response of February 13, 2008, Knowlton I does not disclose each and every limitation of Claim 1, nor those claims dependent thereupon, for at least the reasons made of record. Knowlton II does not cure the deficiencies of Knowlton I; as Knowlton II does not disclose a method for treating tissue using a combination of electromagnetic energy treatments delivered to different tissue depths.

Accordingly, the instant claims are not obvious over the above-cited references. Thus, Applicants respectfully request withdrawal of the present rejection.

## CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Please charge any fees, including fees for extension of time, or credit overpayment to Deposit Account No. **07-1700**, referencing Attorney's Docket No. **KNOW-0019**.

Respectfully submitted,

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By:



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